

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco

**M e m o r a n d u m**

**Date:** July 6, 2004

**To:** The Commission  
(Meeting of July 8, 2004)

**From:** Alan LoFaso, Director  
Office of Governmental Affairs (OGA) — Sacramento

**Subject: AB 1733 (Reyes) - Telecommunications: selling or licensing  
lists of subscribers.**  
As amended July 2, 2004

**Legislative Subcommittee Recommendation:** Support.

**Summary:** This bill would prohibit specified wireless providers from selling or licensing subscriber names and dialing numbers for inclusion in any directory without first obtaining the specified express consent of that subscriber.

**Digest:** Existing law, Cal. Const. art. I, sec. 1, provides *inter alia*, that Californians have an inalienable right to privacy.

Existing law, P.U. Code sec. 2891.1, prohibits a telephone or telegraph corporation from making available specified personal information of residential subscribers to any other person or corporation, without first obtaining the subscriber's written consent, except in specified circumstances, including information used for directories and directory assistance.

Existing law, P.U. Code sec. 2891.1, prohibits a telephone corporation selling or licensing lists of subscribers to include the telephone number of a residential subscriber's unlisted or unpublished number, except in specified circumstances including emergency and other public safety purposes.

This bill would prohibit providers of mobile telephony services from including subscribers' names and dialing numbers in any directory, unless the provider obtains a subscriber's express written consent in a specified format. This bill would further prohibit providers of mobile telephony services, or their direct or indirect agents or affiliates, from publishing or selling directory database information

This bill would establish the following express consent requirements for providers of mobile telephony services:

- (1) It shall be a separate document that is not attached to any other document.
- (2) It shall be signed and dated by the subscriber.
- (3) It shall be unambiguous, legible, and in a minimum 10-point type, and conspicuously disclose that, by signing, the subscriber is consenting to have the subscriber's dialing number sold or licensed as part of a list of subscribers and the subscriber's dialing number may be included in a publicly available directory.
- (4) If under the subscriber's calling plan the subscriber may be billed for receiving unsolicited calls or text messaging from a telemarketer, the provider's form shall include a disclosure, which shall be unambiguous, legible, and in 10-point type at a minimum, that by consenting to have the subscriber's dialing number sold or licensed as part of a list of subscribers or be included in a publicly available directory, the subscriber may incur additional charges for receiving unsolicited calls or text messages.

This bill would provide that no subscriber shall be charged for choosing not to be included in a mobile telephony provider's subscriber directory.

This bill would provide that its provisions are severable.

**Analysis:** The Cellular Industry Trade Association (CTIA), an association representing the wireless industry, is in the process of compiling the first wireless phone directory that may be available by the end of this year. The directory will only be accessible by dialing "411" (directory assistance) on a wireless phone. The directory will not be a printed document like the white pages and will also not be available via the Internet.

The directory will be comprised of subscriber information (name and dialing number) from almost all wireless providers except for Verizon Wireless. Although the Commission does not publish market share information specifically by provider, the largest wireless provider represents 28% of the total market share of the top wireless providers in terms of subscribership.<sup>1</sup> Therefore, over 70% of California wireless users would have their name and wireless telephone number included in the directory.

Proponents of the directory believe that the directory is a necessity because of the growing number of individuals that are canceling their home wireline phones and switching their existing dialing numbers to wireless phones. They also believe that many telemarketers are likely to refrain from soliciting these subscribers because they would not want to incur the expense of calling directory assistance to obtain customer information.

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<sup>1</sup> California Public Utilities Commission, *The Status of Telecommunications Competition in California, Third Report For the Year 2003*, October 31, 2003, at p. 30.

Opponents of the directory believe that the directory would make available subscriber dialing numbers that were not before as readily available, causing these subscribers to be inundated with text-message spam and unwanted telemarketing calls. Given that most wireless plans charge subscribers for incoming calls and text messages, subscribers would have no choice but to bear the cost for answering these calls.

According to the Legal Division, the fundamental legal question raised by this bill is whether California can require wireless carriers to obtain informed, affirmative customer consent to the placement of the customer's name and wireless telephone number in a directory. In 1994, in a late amendment to the Budget Reconciliation Act, Congress included a provision in the Act pre-empting state authority over wireless carrier rates and market entry. As a consequence, the Commission no longer issues to wireless carriers certificates of public convenience and necessity, which authorize entry into the California telecommunications marketplace. In addition, the Commission does not review or set rates for wireless carriers.

The 1994 amendment to the Budget Reconciliation Act, however, did reserve to states authority over terms and conditions of wireless service. The bill's proposal to require customer consent before the customer's name and telephone number can be included in a published directory plainly links publication of the information to the fact that the customer has service with a wireless carrier. No rate or entry issue is implicated by this requirement. The bill does not run afoul of existing federal pre-emption of wireless rates and market entry.

However, the bill was lately amended to bar subscribers from being charged for choosing not to be included in the directory. The Legal Division believes this constitutes regulation of rates, and thus a matter that states would be preempted from prescribing under section 332(c) of the Telecom Act. The author is aware of the possibility of a pre-emption concern and has included a severability clause in the measure.

### **Related Legislation**

U.S. Representative Joe Pitts (R-PA) has introduced H.R. 3558, a federal bill that would require cellular companies to have "clear preauthorization" from users before their names and phone numbers could be added to a directory. Senators Arlen Specter (R-PA) and Senator Michael DeWine (R-OH) have introduced companion bills on the Senate side. These bills are S. 1963 and S. 1973, respectively. None of these bills has been scheduled for mark-up in the subcommittees to which they have been assigned.

Senator Kevin Murray (D-LA) has also introduced SB 199 that was amended to mirror this bill. SB 199 and this bill are double-joined, requiring that both be enacted into law for one to have legal effect.

## **LEGISLATIVE HISTORY**

Senate E.U. & C.: 12-0 (Pass) (6/22/04)

Assembly Floor : 76-0 (Pass) 4/24/03)

Assembly U&C: 13-0 (Pass) (4/21/03)

## **SUPPORT/OPPOSITION**

Support: Consumer Action, Consumers Union, Office of Ratepayer Advocates, Privacy Rights Clearinghouse, Utility Consumers', Action Network, World Privacy Forum

Opposition: None on file.

## **LEGISLATIVE STAFF CONTACT**

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**Date:** July 6, 2004

**BILL LANGUAGE:**

BILL NUMBER: AB 1733    AMENDED  
BILL TEXT

AMENDED IN SENATE    JULY 2, 2004  
AMENDED IN SENATE    JUNE 29, 2004  
AMENDED IN SENATE    JUNE 15, 2004  
AMENDED IN SENATE    JUNE 1, 2004

INTRODUCED BY    Assembly Members Reyes, Campbell, Correa, Levine,  
and Matthews

(Coauthors:    Assembly Members Berg, Chavez, Chu, Diaz, Firebaugh,  
Frommer, Goldberg, Hancock, Laird, Leno, Lieber, Lowenthal, Montanez,  
Nakano, Ridley-Thomas, Steinberg, and Wesson)

(Coauthors:    Senators Bowen and Sher)

MARCH 5, 2003

An act to amend    Section 2891.1 of the Public Utilities Code,  
relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

AB 1733, as amended, Reyes.    Telecommunications:    selling or  
licensing lists of subscribers.

Under existing law, the Federal Communications Commission licenses  
and partially regulates providers of commercial mobile radio  
service, including providers of cellular radiotelephone service,  
broadband Personal Communications Services (PCS), and digital  
Specialized Mobile Radio (SMR) services (collectively, mobile  
telephony service providers). Under existing law, no state or local  
government may regulate the entry of, or the rates charged by, any  
commercial mobile radio service, but is generally not prohibited from  
regulating the other terms and conditions of commercial mobile radio  
service.

Under existing law, the Public Utilities Commission has regulatory  
authority over public utilities, including telephone corporations.  
Existing law authorizes the commission to regulate telecommunications  
services and rates of telephone corporations, except to the extent  
regulation of commercial mobile radio service is preempted by federal  
regulation. Existing law prohibits a telephone corporation selling  
or licensing lists of residential subscribers, from including the  
telephone number of any subscriber assigned an unpublished or  
unlisted access number, as defined, without his or her written waiver  
of this protection.

This bill would permit a subscriber to waive the above described  
prohibition ~~upon~~ against including the  
telephone number of a subscriber assigned an unpublished or unlisted  
access number. The bill would prohibit a provider of mobile  
telephony services, as defined, providing the name and dialing number  
of a subscriber for inclusion in a directory, from including the  
dialing number of any subscriber without first obtaining the express  
consent of that subscriber. The bill would establish certain  
requirements for the provider's form for obtaining the subscriber's  
express consent. A subscriber would be permitted to revoke his or  
her consent to inclusion in a directory and would require that the  
mobile telephony services provider comply with the subscriber's

request to opt out within 30 days. The bill would prohibit a provider of mobile telephony services or an affiliate or agent, from publishing any directory database, or any portion or segment of a directory database. The bill would prohibit a provider of mobile telephony services or an affiliate or agent, from selling any directory database, or any portion or segment of a directory database, to a third party.

*This bill would make the operation of its provisions contingent upon the enactment of SB 199.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2891.1 of the Public Utilities Code is amended to read:

2891.1. (a) Notwithstanding Section 2891, a telephone corporation selling or licensing lists of residential subscribers shall not include the telephone number of any subscriber assigned an unlisted or unpublished access number. A subscriber may waive all or part of the protection provided by this subdivision through written notice to the telephone corporation.

(b) Notwithstanding Section 2891, a provider of mobile telephony services providing the name and dialing number of a subscriber for inclusion in any directory, shall not include the dialing number of any subscriber without first obtaining the express consent of that subscriber. The provider's form for obtaining the subscriber's express consent shall meet all of the following requirements:

(1) It shall be a separate document that is not attached to any other document.

(2) It shall be signed and dated by the subscriber.

(3) It shall be unambiguous, legible, and in a minimum 10-point type, and conspicuously disclose that, by signing, the subscriber is consenting to have the subscriber's dialing number ~~sold or licensed as part of a list of subscribers and the subscriber's dialing number may be~~ included in a publicly available directory.

(4) If under the subscriber's calling plan the subscriber may be billed for receiving unsolicited calls or text messaging from a telemarketer, the provider's form shall include a disclosure, which shall be unambiguous, legible, and in 10-point type at a minimum, that by consenting to have the subscriber's dialing number ~~sold or licensed as part of a list of subscribers or be~~ included in a publicly available directory, the subscriber may incur additional charges for receiving unsolicited calls or text messages.

(c) A subscriber who provides express prior consent pursuant to subdivision (b) may revoke that consent at any time. A provider of mobile telephony services shall comply with the subscriber's request to opt out within 30 days.

(d) A subscriber shall not be charged for making the choice to not be listed in a directory.

(e) A provider of mobile telephony services, or any direct or indirect affiliate or agent of a provider, may not publish, in printed, electronic, or other form, the contents of any directory database, or any portion or segment thereof.

(f) A provider of mobile telephony services, or any direct or indirect affiliate or agent of a provider, may not sell to a third party the contents of any directory database, or any portion or

segment thereof.

(g) This section does not apply to the provision of telephone numbers to the following parties for the purposes indicated:

(1) To a collection agency, to the extent disclosures made by the agency are supervised by the commission, exclusively for the collection of unpaid debts.

(2) (A) To any law enforcement agency, fire protection agency, public health agency, public environmental health agency, city or county emergency services planning agency, or private for-profit agency operating under contract with, and at the direction of, one or more of these agencies, for the exclusive purpose of responding to a 911 call or communicating an imminent threat to life or property.

(B) Any information or records provided to a private for-profit agency pursuant to this subdivision shall be held in confidence by that agency and by any individual employed by or associated with that agency. This information or these records shall not be open to examination for any purpose not directly connected with the administration of the services specified in subdivision (e) of Section 2872 or this paragraph.

(3) To a lawful process issued under state or federal law.

(4) To a telephone corporation providing service between service areas for the provision to the subscriber of telephone service between service areas, or to third parties for the limited purpose of providing billing services.

(5) *To a telephone corporation to effectuate a customer's request to transfer the customer's assigned telephone number from the customer's existing provider of telecommunications services to a new provider of telecommunications services.*

(6) To the commission pursuant to its jurisdiction and control over telephone and telegraph corporations.

(h) Every deliberate violation of this section is grounds for a civil suit by the aggrieved subscriber against the organization or corporation and its employees responsible for the violation.

(i) For purposes of this section, "unpublished or unlisted access number" means a telephone, telex, teletex, facsimile, computer modem, or any other code number that is assigned to a subscriber by a telephone or telegraph corporation for the receipt of communications initiated by other telephone or telegraph customers and that the subscriber has requested that the telephone or telegraph corporation keep in confidence.

(j) No telephone corporation, nor any official or employee thereof, shall be subject to criminal or civil liability for the release of customer information as authorized by this section.

(k) The provisions of this section are severable. If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application.

(l) For purposes of this section, "mobile telephony services" means commercially available interconnected mobile phone services that provide access to the public switched telephone network (PSTN) via mobile communication devices employing radio wave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR). "Mobile telephony services" does not include mobile satellite services or mobile data services used exclusively for the delivery of nonvoice information to a mobile device.

*SEC. 2. This act shall become operative only if Senate Bill 199 of the 2003-04 Regular Session is enacted and becomes effective on or before January 1, 2005.*